

1 deposit is concentrated near the bedrock, and there is  
2 still unexcavated matrix near the bedrock, as you move  
3 out from that, the midden deposit goes away, and there  
4 is still archeological material that is spread out by  
5 maybe whoever plowed the site in the past or erosion.

6 So as you move out, the likelihood of finding  
7 something is lower, but there is still deposit that is  
8 unexcavated.

9 JOHN COOK: When I -- Chair, when I heard you  
10 say also "sets" of human remains and things like that,  
11 it is really not like you're getting a whole bunch of  
12 pieces of an individual or anything like that. It's  
13 cremation bone that has been broken up, and you -- you  
14 have both calcined and burnt bone and then identifiable  
15 bone that's human. So I mean you -- I don't know how  
16 many individuals you'd be able to get out of it, but  
17 when the coroner says three to eight, there is three to  
18 eight identifiable distinct pieces that would be unique  
19 on a person, so you have between three and eight people,  
20 but it's not like a set, you know, a whole bunch of bone  
21 or anything like that.

22 CHAIRMAN RAMOS: No. I understand. Cremation,  
23 that is what it is. However, just a bone fragment that  
24 is identified to a separate person, separate Native  
25 American person, constitutes human burial to myself.

1 and -- and others. So I just want to get back.

2 When you did the first site recovery, the  
3 initial site when you guys took over, was from any of  
4 those deposits that you collected later found out to  
5 have remains in them?

6 JOHN COOK: No.

7 CHAIRMAN RAMOS: It wasn't until afterwards.

8 JOHN COOK: They were identified by -- Rose  
9 Tyson, I believe.

10 MICAH HALE: There were eleven pieces of bone  
11 looked at by Rose Tyson, and -- and ten were identified  
12 as not human, and one was -- one could not be  
13 ascertained as to whether it was human or not. Some of  
14 it was calcined, if I'm correct.

15 Right, Carmen?

16 CARMEN LUCAS: I'm not sure I agree with you.  
17 Is this that bone you discovered in the lab?

18 MICAH HALE: No. No. This is evaluation --

19 CARMEN LUCAS: So the only bone that I am aware  
20 of was, and I can give you complete detail on that, was  
21 by Dr. Hinkes.

22 UNIDENTIFIED MAN: No, there was an evaluation  
23 by Don Laylander did --

24 CARMEN LUCAS: Right. I'm not familiar with --

25 UNIDENTIFIED MAN: They found ten, eleven

1 pieces of calcined bone and Rose Tyson looked at it  
2 and --

3 JOHN COOK: Wasn't that earlier than 2009,  
4 though?

5 MICAH HALE: Yeah. That was identified --

6 CHAIRMAN RAMOS: When was the evaluation phase?  
7 What time period was that done?

8 UNIDENTIFIED MAN: In our report it was -- we  
9 have Rose Tyson --

10 CHAIRMAN RAMOS: He said nothing until February  
11 of 2009. So when --

12 COMMISSIONER MIRANDA: Right.

13 MR. GILPIN: The initial phase was 2006. If  
14 you look at the time line, that's when it starts. So  
15 you have the evaluation phase in 2007.

16 UNIDENTIFIED WOMAN: Right.

17 MR. GILPIN: The initial EDAW survey was.

18 COMMISSIONER MIRANDA: Why don't we know that?  
19 I don't know.

20 COMMISSIONER SHERMAN: I think what is  
21 confusing the issue is Dave's saying there was a bone --  
22 because according to the document that we have in Dave's  
23 report, there was a bone discovered on August 7th of  
24 2007.

25 UNIDENTIFIED MAN: Right.

1 UNIDENTIFIED WOMAN: So that is when the call  
2 from the Examiner came in, but according to your  
3 documents, and the Medical Examiner, it is associated  
4 with the site in Jamul, on Rincon, associated or  
5 whatever.

6 So, Dave, my question to you would be, is there  
7 a reason we don't have the actual copies of the  
8 Medical -- of the Examiner's report as a part of your  
9 report?

10 MR. SINGLETON: The one that came in from Cal  
11 Vine was over the phone, and only recently has the  
12 Medical Examiner been sending us reports, you know, on  
13 their -- on their stationery, you know. But -- but that  
14 report in 2007, I believe is -- is what -- what, you  
15 know, Micah Hale is talking about, when Rose Tyson, the  
16 Museum of Man did the analysis.

17 COMMISSIONER SHERMAN: Yeah, but it's on a  
18 separate site. My -- my concern is if their record  
19 is --

20 UNIDENTIFIED MAN: It might be.

21 COMMISSIONER SHERMAN: -- true --

22 MR. SINGLETON: I don't know. I think in -- in  
23 sum we come up with the same numbers, but it's quite  
24 possible, you know, that -- that, you know, what  
25 Mr. Gilpin said we made a mistake in terms of thinking

1 that it was at this site and it was perhaps at -- at  
2 another site. You know, still, you know, significant  
3 remains --

4 COMMISSIONER SHERMAN: Right. Right.

5 MR. SINGLETON: -- were discovered at the site.

6 COMMISSIONER SHERMAN: I have two separate  
7 concerns. The human remains are a whole other issue.

8 My first concern is that if the Native American  
9 Heritage Commission -- we are taking a lot of phone call  
10 information, but there is not a lot of substance to back  
11 up the phone call. I mean I can call you and say  
12 anything I want. Where is the substance? And the  
13 substance is the report that the Medical Examiner  
14 generates.

15 So how come the Commission doesn't have the  
16 substance? You are completely correct. This report,  
17 that supposedly happened on a phone call in 2007, wasn't  
18 generated until two years later in July of 2008.

19 MR. GILPIN: Right. If you compare the detail  
20 from Exhibit A from --

21 MR. SINGLETON: Well, that, you know, that's  
22 true, to an extent. We're trying to improve --

23 CHAIRMAN RAMOS: I think you're hitting  
24 it right on the -- we're trying to get past a certain  
25 point. We're trying to come to some point of

1 mitigation, mediation type deal to move forward. We  
2 could -- we could talk about the past and things, but we  
3 do know that there is anywhere from three to eight  
4 remains out there. We know that it's -- it is a  
5 cremation site. We know that there is deep cultural  
6 significance to the area.

7 So how are we going to get past these -- these  
8 types of deals?

9 MR. GILPIN: But I raised it because I think  
10 the timing is critical, and it was asserted in the Staff  
11 report that we knew this in 2007 when, in fact, we  
12 didn't know there were human remains on the site until  
13 February of '09. And to me that's significant.

14 CHAIRMAN RAMOS: Okay.

15 MR. GILPIN: Specifically under the CEQA  
16 documents it's significant, because this was not -- this  
17 has not been designated as a burial site at this point  
18 in time. We contacted NAHC in the fall of '08 when we  
19 were doing our environmental analysis, requested  
20 information as to whether this was such a site; got a  
21 form back that said, "No, it's not."

22 So as an agency working with the Native  
23 American community, there has got to be some ability to  
24 rely on the information we get and move forward.

25 Due to the high -- I guess the probability that



1 you might find remains based on the canine, um,  
2 situation, we -- we went forward considering there might  
3 be a possibility that we find human remains on the site,  
4 and the CEQA statute allows us how to deal with that.  
5 If we do, then you go under the CEQA provisions as to  
6 how to mitigate it, which is exactly what the agency did  
7 when they found the remains.

8 COMMISSIONER MIRANDA: I don't agree with that.  
9 I think that -- you know, maybe you're sort of splitting  
10 hairs here, and I think you really did know what type of  
11 site you were dealing with, and I'm not sure right now  
12 in hearing, you know, I won't know this until we hear  
13 what everybody has to say. I don't know if you knew  
14 there were human remains there or not. Before you were  
15 saying you didn't. I don't know.

16 But regardless of whether you did or you  
17 didn't, you had enough information to know what kind of  
18 site was there, and that you may have -- you may be  
19 designating it an archeological site under the CEQA, and  
20 that you're saying that you followed mitigation pursuant  
21 to CEQA, but I think there was additional information  
22 that you knew about the site for the potential of it  
23 being a burial area and a sacred site.

24 I think you probably knew that it was a sacred  
25 area. You knew the consistency of the soil. You knew

1 the other items that were being found were indicative of  
2 this kind of site and that -- and that you had those  
3 archeological surveys done that found these kinds of  
4 materials that are indicative of a sacred area, and it  
5 wasn't dealt with appropriately in the mitigated neg.  
6 dec.

7           There wasn't procedures and parameters set out  
8 of what to do in case there was this slew of remains  
9 that started being found, and -- and even if you set all  
10 that aside, the point is, once you're into a process,  
11 even if it's after the MND's approved and done, and  
12 you're into what you guys are calling data recovery, you  
13 found some new information. You found some additional,  
14 new, significant information that shows that this is a  
15 burial area, and from here on out, like Chairman is  
16 saying, we have a situation where we have to figure out  
17 how we're going to proceed with this going forward,  
18 because you're faced with a set of facts that -- that  
19 not only is consistent with what you knew before, but  
20 now we're looking at a set of facts that -- that clearly  
21 demonstrates that this is now something significant;  
22 that this is now a burial area.

23           And I -- and it doesn't matter that there are  
24 small pieces. It doesn't matter that they're not  
25 intact, full skeletons. The law is clear about that.



1           We have a situation where we clearly have an  
2   area that's -- that's sacred and a burial area, and we  
3   have to figure out how we're going to move on from here.

4           So I don't want to get caught up too much with  
5   the whole -- I appreciate what you're saying about the  
6   process, but I really don't want to get caught up with  
7   the process, because I think the facts are what's going  
8   to dictate how we move forward here.

9           MR. GILPIN: But doesn't the process matter in  
10   that you told us who the MLD is, the person who tells us  
11   how to deal with the remains, and then we dealt with  
12   that designated MLD for eight months after the find  
13   under your complete awareness?

14          COMMISSIONER MIRANDA: I think that --

15          MR. GILPIN: And we worked that out with them  
16   and, in fact, took the steps that they recommended that  
17   we're now being accused of misdemeanors for having  
18   implemented.

19          COMMISSIONER MIRANDA: I don't --

20          MR. GILPIN: That's hardly fair.

21          COMMISSIONER MIRANDA: I don't know that you're  
22   being accused of that. I think you're being -- I think  
23   you're being -- I think what's happening is, look, we've  
24   got a change in circumstances. The KCRC decided they  
25   wanted to -- to turn over the designation of the MLD to

1 Viejas because, you know, all of these things started  
2 happening.

3           The factual situation changed during that data  
4 recovery period, and there needs to be a different  
5 course of action is what I'm thinking all of the  
6 parties -- all the tribal parties involved were going  
7 through their minds of, okay, now, we -- we did agree to  
8 do this, and there is nothing wrong with it. The KCRC  
9 agreed to go ahead with the excavations to a certain  
10 extent. Tribes do that all the time.

11           But then once you figure out what's being  
12 pulled out, at that point in time you're like, "Whoa.  
13 You know, let's take a look at what we really have now,  
14 what we're dealing with, because it wasn't what we  
15 thought at the outset, and, you know, fully what we  
16 thought at the outset."

17           So I don't think it's that, you know, you're  
18 being penalized for having done this. It's just that  
19 we're at a different juncture now.

20           MR. GILPIN: But there is no new information.  
21 All the information you're asking --

22           COMMISSIONER MIRANDA: There is no new  
23 information. No. You are saying --

24           MR. GILPIN: Ma'am, wait a minute.

25           COMMISSIONER MIRANDA: You're saying you did

1 know about the burials before.

2 MR. GILPIN: No. I'm saying we learned about  
3 the remains in February of '09. We did the -- we did  
4 the data recovery from February of '09 to August of '09.  
5 They published a data recovery report in August of '09,  
6 and KCRC was aware of those findings in October of '09  
7 when they agreed with how to deal with the site.

8 You've now had --

9 COMMISSIONER MIRANDA: But then you had a --

10 MR. GILPIN: Wait. We have implemented them.  
11 Okay? We did that up until February when Viejas enters  
12 the picture, and there has been no new findings between  
13 October of '09 when KCRC agreed to the mitigation  
14 measures and February. There is no new findings.

15 COMMISSIONER MIRANDA: There hasn't been?  
16 There hasn't been more human remains that are found?

17 MR. GILPIN: No. No. There are no new  
18 remains. The last remains found on the site were in  
19 March of '09.

20 CHAIRMAN RAMOS: When you guys first started,  
21 you did your survey, and certainly you did a historical  
22 analysis of it and -- and tribes associated with the  
23 area. The Kumeyaay people are part of that co-area  
24 which Viejas is, which the KCRC group is.

25 So by letting Viejas take the lead on it is

1 still staying within the Kumeyaay people making sure  
2 that those remains that have been uncovered are still  
3 being looked after. Those are the ancestors of -- of  
4 the people.

5 Just because now there are reservations here  
6 and reservations there doesn't mean that everybody is  
7 separate on it. Culturally it is still the same people  
8 that you are looking to to determine the mitigation, the  
9 reinterment of those remains.

10 COMMISSIONER MIRANDA: And I guess I would also  
11 have to look at, you know, what specifically that KCRC  
12 agreed to, because I don't think -- I still -- I'm not  
13 inclined to think that it's inconsistent with going  
14 forward in a -- in a direction such as this.

15 MR. GILPIN: They are asking for complete  
16 avoidance. I mean is that different than --

17 COMMISSIONER MIRANDA: I thought that -- it was  
18 always --

19 MR. GILPIN: That --

20 COMMISSIONER MIRANDA: I thought the tribe's  
21 position, I mean everybody's preference was always  
22 avoidance.

23 MS. COYLE: KCRC letter of November 13th  
24 stated: It is KCRC's intention to preserve as much of  
25 this site as possible.

1 COMMISSIONER MIRANDA: I mean --

2 COMMISSIONER SHERMAN: But they talked about  
3 putting the soil back which, I guess, could cause  
4 confusion.

5 COMMISSIONER MIRANDA: But -- but there is --  
6 but it's my understanding it is the preference of the  
7 tribes to have avoidance of this area, and it's -- it's  
8 even more strong now because of what was -- occurred  
9 during your data recovery process.

10 CHAIRMAN RAMOS: But it seems like we need to  
11 get a copy of this mitigation, which we do, right, in  
12 Exhibit S, right, in this big packet?

13 UNIDENTIFIED WOMAN: No, that's --

14 CHAIRMAN RAMOS: We can argue about the  
15 processes. We still have remains that are exposed.  
16 There are going to be continuing things going forward.  
17 So we have to come to some type of, you know, moving  
18 forward, as to how are we going to come to some  
19 understanding of what is going to happen? I mean we  
20 could sit here and just keep going round and round, but,  
21 you know, I think it's our role, and I think by having a  
22 meeting down in Southern California we're going to try  
23 to come together on some of those things.

24 (End of Disk 1.)

25 (Beginning of Disk 2.)

1 CHAIRMAN RAMOS: We've got to move on. We do  
2 have other speakers. You had your hand up.

3 TRISH FERNANDEZ: I was contracted as a  
4 third-party reviewer -- of the MND -- and I just  
5 resigned from the State Historic Resource Board. I  
6 think -- I just wanted to state that I think the  
7 cultural studies were done professionally in accordance  
8 with CEQA and in accordance with 5097. And I think, you  
9 know, early on there was this assertion that, you know,  
10 there was the possibility of potential human remains,  
11 and we can always look back in hindsight and go, "Whoa,  
12 what if we did this or did that or ask these people this  
13 or ask that," but in looking at, you know,  
14 professionally current standards and what's appropriate  
15 and adequate, the group of studies were done very well.

16 In the -- in the initial study mitigated neg.  
17 dec., there was the discussion of potential for both  
18 archeological remains to be discovered and human  
19 remains, and that -- and it's standard process, whether  
20 it's -- whether it really tightly closes the loop or not  
21 is -- is another matter for us all to discuss.

22 COMMISSIONER MIRANDA: Exactly.

23 TRISH FERNANDEZ: But -- but they did what was  
24 professionally standard right now, and it is basically  
25 here is 5097. We're going to do this, and that's -- so



1     there -- there was a contingency for that. There was  
2     mitigation measure. I think that's all I have to say.

3             CHAIRMAN RAMOS: Thank you. Moving on with  
4     this next speaker, Patricia A. Prochaska.

5             MS. PROCHASKA: Prochaska.

6             CHAIRMAN RAMOS: Prochaska.

7             MS. PROCHASKA: Yes, Chairman Ramos. Good  
8     afternoon. I would respectfully defer to the  
9     presentation by Viejas.

10            CHAIRMAN RAMOS: We have a presentation?

11            MS. PROCHASKA: Or a statement, I should say.  
12     I have a very brief statement of support.

13            I serve as Special Counsel to the Sycuan Band  
14     of the Kumeyaay Nation, and I realize I'm a poor  
15     substitute for Chairman Daniel Ramos or any members of  
16     the Tribal Council, for which I apologize.

17            Very briefly, Chairman Tucker, the business  
18     committee and several members of the tribe remain very  
19     deeply concerned about this project and stand behind  
20     Viejas as the lead -- the MLD, Viejas as of Kumeyaay  
21     descent, however is very concerned, and wishes today  
22     known if there is a hearing in Southern California, I am  
23     certain that either someone from the Tribal Council,  
24     business committee, or tribal members will be personally  
25     present and will make a much more appropriate statement

1 to the Commission.

2 CHAIRMAN RAMOS: Thank you.

3 MS. CANNON: Thank you.

4 CHAIRMAN RAMOS: Carmen Lucas.

5 CARMEN LUCAS: This is my site reference, my  
6 personal record, and this is my research of Malcolm  
7 Rogers' site records in San Diego County and Imperial  
8 County that acknowledges sacred sites, sacrifice areas  
9 by pot shard, but this is what I find most important.

10 My name is Carmen Lucas. I'm a Kwaaymii Indian  
11 from Laguna Mountain. I work as a Native American  
12 Monitor, and I was a principal -- I like to think the  
13 principal Native American Monitor on this site.

14 Would you agree with that, John?

15 JOHN COOK: Yes.

16 CARMEN LUCAS: Okay. Thank you. I've been  
17 doing this type of work for a number of years. I have  
18 found this project enormously disturbing. I think both  
19 Dr. Hale and John Cook would tell you I sat in their  
20 office a minimum of four times and explained my concern  
21 about this project because of what I saw there.

22 I also met with Padre Dam engineers. Mr. Cook  
23 asked me to join him at their office in Santee, which I  
24 did. I explained to them what burial sites are, what  
25 sacrifice areas are, what the burial process is, the

1 fact that we may have lingering spirits at these sites.

2 All of this makes it very sensitive and which  
3 is why I recommended at the time that the site be  
4 avoided. I'd like to give you a little history.

5 I was called first to assist as the daily  
6 Native American Monitor. John asked me to do this when  
7 they were doing testing. Testing is just the STPs.

8 There was another archeologist in charge of the  
9 site. Her first name was Linda. I don't remember her  
10 last name.

11 MICAH HALE: Akutz.

12 CARMEN LUCAS: I could only be there for one  
13 day because I was already committed with a site in the  
14 desert, and I told John that I could only be there one  
15 day, but I would ask that Clint Linton, Native American  
16 Monitor and archeologist from Santa Ysabel, who runs the  
17 Red Tail Monitoring Company, fill in in my absence,  
18 which he did.

19 In the one day that I was there it was clear to  
20 me, or appeared to be clear to me, that Padre Dam had  
21 already made the decision that they were going to put  
22 their water pump on the milling feature.

23 At that time I asked Don Laylander and them why  
24 that had to be done, and so I put all that in my report.  
25 I think you have reference to it.

1 I -- I would like you to look at it because I  
2 think early on the sensitivity of this resource was made  
3 available to them, both by myself and by Clint Linton  
4 who later did that.

5 At the time that I raised my concerns, I asked  
6 that the forensic dogs who are trained to come down and  
7 look for prehistory human remains come. Unfortunately,  
8 again, I was committed to another project and could not  
9 be there that day. Unfortunately, the grass was up to  
10 our waist out in that field, but the dogs nonetheless  
11 did indicate one area of interest.

12 When we finally got into the data recovery  
13 project, I was aware, and Micah and I had some struggles  
14 there for --

15 How long would you say? Two weeks?

16 MR. HALE: About a week and a half.

17 CARMEN LUCAS: And I was -- was so frustrated  
18 with him, and I hope you don't mind my saying this, but  
19 I was so frustrated with him that I asked Clint to stand  
20 by, because I would not tolerate that type of treatment  
21 any longer. I don't know what happened to Micah, except  
22 his conscience -- I did get two phone calls which I  
23 appreciated in the evening where he apologized profusely  
24 for treating me the way that he did.

25 I feel -- as their Native American Monitor,

1 they pay me a lot of money to be there as their  
2 consultant. They asked me to there be. I met with  
3 Padre Dam officials. I explained to them why this site  
4 was sensitive. We went ahead. The dogs came down. I  
5 wasn't there.

6 A year later -- well, it wasn't a year later,  
7 maybe in the summertime, I can't remember, about six  
8 months later, John called and asked that I meet with  
9 Padre Dam officials in -- in Santee, which I did, and  
10 again I explained this.

11 So none of this is a surprise to anybody.  
12 They've all been aware that this was a sensitive issue.  
13 Unfortunately for me, I am looked at as a different kind  
14 of a category on an Indian. I'm not really part of a  
15 federally recognized reservation.

16 So it's unfortunate how this process works.  
17 The reason I bring it up is because I think it's  
18 something that needs to be looked at. Because I'm not a  
19 federally recognized Indian, that's not true, I've never  
20 been federally terminated, and that's a matter of  
21 argument, but, you know, I stand my ground on that, but  
22 nonetheless I'm treated like -- like an outsider.

23 So I am never nominated as the Most Likely  
24 Descendant, except one time out in the desert, Dave did  
25 that. So that once -- the reason I wanted to say that

1 is once that the MLD is -- is named, I'm pretty much out  
2 of the thing. All I can do is continue to work for the  
3 company who has hired me. I can continue to make  
4 recommendations to them.

5 I feel that I did. I felt that I was straight  
6 upfront with them. I met in the lab and in their office  
7 with JR and Micah a minimum of three times, again  
8 expressed my concern, the sensitivity of this site.

9 Now, one of the things I did realize right  
10 upfront is we had some archeologists that were  
11 inexperienced. They were two-year graduates from  
12 San Diego College, did not have a trained eye, did not  
13 know what they were looking at.

14 The first thing I was concerned with is that  
15 the screens where they go through the dirt was set up in  
16 the shade underneath the pepper trees. My first day out  
17 there in January, there was frost all over the ground  
18 and it was cold. It was really clear that they were not  
19 going to get through that dirt.

20 And so I insisted that we do water screening.  
21 I insisted that I get to review all the dirt before the  
22 archeologists throw it out. Some of that I had to take  
23 home on the weekends and go through it at my own time,  
24 my own expense, but I'm glad that I did that, because I  
25 pulled out the bones I felt needed to be identified, and



1 I asked that they be identified.

2 Fortunately, Micah did have the coroner's  
3 representative. I cannot tell you how much I appreciate  
4 this. It was the coroner's representative who came out  
5 to the field and said, "Yes, these are human."

6 After that, the crew chief and myself would go  
7 to the doctor's office once a week or so with what bones  
8 we found, and she sat there, and I've never had anybody  
9 do this with such tenacity, but she would study each  
10 one, look at it underneath a magnifying glass, put a  
11 light on it, and she says, "This is the heel of a baby  
12 that was in the mother's fetus when she was cremated."

13 From that time on Mr. Hale's attitude changed  
14 because he has a little girl at home. He understood  
15 what that was.

16 Clint Linton looked at me, and he says,  
17 "Carmen, don't ever let -- ask me to fill in for you  
18 again, and don't ask my crew to, because we can't stand  
19 here and watch this," and so it was clear that this was  
20 something the Indians all understood. Those Indians  
21 that I knew that were involved in this project fully  
22 understood this was a very sensitive site, and it had  
23 the high potential of human remains, which indeed, they  
24 did unveil themselves.

25 In addition to that, the soil is such that one

1 would ask, "Well, how would you know?" Well, because I  
2 live on my own ancestral land, and I have four burial  
3 grounds on my ancestral land, and I've had to work in  
4 those burial grounds, and that's where I have buried my  
5 father.

6 That soil at Padre Dam, other than the depth,  
7 was no different than what we have in Laguna.

8 I have brought my record with me, which is  
9 mostly photographs, because I want you to see the type  
10 of artifacts that we have there, things that are  
11 indicative of burial goods, which would be the bead and  
12 some of the stone tools, all of that which were broken.  
13 For me those are sensitive and certainly validate the  
14 fact that this is a sacred, sensitive site.

15 The fact that there was so much pottery there  
16 and the pottery was indicative of being all from across  
17 the county. When I say that, I'm talking the lower  
18 elevation as well as the mountain as well as the desert,  
19 and there was a number, I would say roughly, 12 pieces  
20 of pot shards that had etching on it which is something  
21 I've been interested in and done my own research on,  
22 because there is so little of it in San Diego County,  
23 and for some reason it's been ignored in the  
24 archeological record.

25 One of the images that are on there, which I

1     tried to replicate on the front of that book, indicate  
2     the stairway to the Milky Way. The stairway to the  
3     Milky Way, as you probably all know, carries the spirit  
4     to the Milky Way. We all return there. We're all born  
5     from there. So those are the things I understand.

6             I'm 74 years old. I'd like to think I'm  
7     knowledgeable in my heritage, which is why these folks  
8     hired me and asked me to participate in their project.

9             I have pleaded with Padre Dam. Padre Dam and  
10    JR and Micah came to the KCRC and again made their  
11    presentation, and again presented it. "Well, we only  
12    found a few fragmented bones."

13            I asked Micah at the time, "You need to tell  
14    the Kumeyaay people that this is a burial ground. You  
15    need to put it in our language. Our people need to  
16    understand what this is."

17            And the -- Jessie Pinto from Jamul thought  
18    about it and he said, "You know, we need to at least go  
19    out there and sing some songs," because it was clear by  
20    then that Padre Dam was going to go ahead and do what  
21    they wanted to do.

22            Under the circumstances, we all, I think  
23    probably did what we felt was best. Do I like it? No.  
24    Because, you know, I suggested from the very beginning  
25    the milling feature is 26 feet long. That's a long

1     milling feature, and it has both slicks. There is  
2     cracks in the milling feature where you can tell where  
3     they used it to -- to clean skin or hide or whatever  
4     they did. They have what we call the Cuyamaca ovals,  
5     which are milling features, but they're long rather than  
6     round. We had the round ones.

7             So it indicated to me that this site had an  
8     enormous amount of information. We were never going to  
9     get all the information out.

10            And it has been misrepresented that they did a  
11     hundred percent data recovery. They did not. You know,  
12     if you look at two acres, and you only do five percent,  
13     how could that possibly be a hundred percent? It can't.  
14     It cannot.

15            For me as an Indian, I'm here to tell you with  
16     tears in my eyes, this is troubling. This is our  
17     history. If we cannot defend our history and our old  
18     folks, then who are we? We have nothing to give to our  
19     children and to our grandchildren.

20            To me that's a disgrace, and how is it this  
21     civilization and CRM companies all get to make a lot of  
22     money off of our history? I don't understand that. I  
23     will go to my grave trying to understand that.

24            Now, I work with these folks and don't  
25     misunderstand me. I like 'em. But they know where I

1 stand.

2 I think you'd say I've been honest and straight  
3 upfront with you from the very beginning telling you  
4 this is a sacred site. When the Indian community finds  
5 out about it, they're going to be angry. And indeed  
6 they were.

7 When this project was over and I told ASM and  
8 Padre Dam, "I cannot in clear conscience be the monitor  
9 here any longer knowing what I know." Clint Linton said  
10 the same thing. And I suggested that to JR, that he get  
11 Frank Brown who you know his father worked at the  
12 Heritage Commission and did monitoring and worked with  
13 JR years ago, and that's when Frank said, you know,  
14 "This -- this is not acceptable," and so he's asked  
15 his -- his people to come forward and, again, I'm here  
16 to say thank you to you, and I don't know where this is  
17 going to go. I just wanted you to know my -- my end of  
18 the deal.

19 As far as I know, I can answer your questions  
20 for you. I was there almost every day. I have a good  
21 sense of this project.

22 If you don't agree with me, Micah, please say  
23 so.

24 I thank you.

25 CHAIRMAN RAMOS: Thank you.

1 COMMISSIONER MIRANDA: Thank you, Carmen. Did  
2 someone say a pipe fragment?

3 CARMEN LUCAS: Yes, two of them that I'm aware  
4 of.

5 COMMISSIONER MIRANDA: They are in the --  
6 (Break in the recording.)

7 COUNCILMAN GREYBUCK ESPINOZA: (Speaks Indian)  
8 Come up here and -- and share my feelings on this -- on  
9 this site.

10 First off, I just want to talk about the  
11 respect that's instilled into us as young men and young  
12 children, and that respect is to everything around us,  
13 and that respect is for -- for the living and for those  
14 that have passed away, and I think that's what I'm doing  
15 here today, is honoring those that -- that are in that  
16 ground right there. I'm sure they'd do the same thing  
17 if I was -- if the table was turned, and I was the one  
18 laying in the ground, and you know our children are  
19 going to look at this one day and say, "You know what?  
20 My people, you know, they stood up for those -- for our  
21 ancestors," and that's what we're trying to instill into  
22 our children. And that's -- that's the kind of respect  
23 that we look for with Padre Dam.

24 You guys have to put yourselves in our shoes  
25 and if this was your -- was your family laying there,



1     what would you do to protect them? Would you say  
2     anything? Or would you -- would you let -- would you  
3     let us take the machinery and turn over the soil and do  
4     what we want? That's something you have to ask  
5     yourselves.

6             And we talk about KCRC. I was just at a  
7     meeting with them last week, and Steve Banegas, the  
8     Chair of the KCRC said, "You know, whatever you guys do,  
9     we stand behind you. We feel we weren't given all of  
10    the information." And we talk about alternatives when  
11    it comes to the site location. I believe that  
12    information wasn't given to them.

13            And that's something that we need to take into  
14    account, too.

15            When Frank Brown brought this to Tribal  
16    Council, it really stirred up a lot of emotions, and he  
17    said, you know, that the bone fragments that they're  
18    finding, the -- the pottery shards, that this is a  
19    burial ground, and right then and there Tribal Council,  
20    you know, they didn't -- they didn't want to hear no  
21    more, and what they want to do is preserve that area,  
22    and we'll do everything that we can to preserve an area  
23    that has our people -- has our people there.

24            There is -- there is nothing more than -- than  
25    what I want to do is -- is to show our children that

1     this -- if you believe in something, follow your heart,  
2     and -- and do what you can.

3             And just one -- one last thing as -- as I know  
4     that the -- you guys still have to go through all the  
5     information. I know we don't have a quorum today.  
6     We'll meet down in San Diego again.

7             But I don't know what's going to happen from  
8     here on out, but I'd like to see that in the meantime  
9     that no construction is -- is to move forward until you  
10    guys make your recommendation, and if Padre Dam doesn't  
11    accept the recommendation, then -- then we would  
12    ultimately turn it over to the Attorney General and wait  
13    for their decision.

14            So on behalf of the Viejas Band of Kumeyaay  
15    Indians, I thank you once again.

16            CHAIRMAN RAMOS: Thank you. Thank you.  
17            Courtney?

18            MS. COYLE: I think I'm going to go last. I  
19    still need to take a moment. I will let Viejas counsel  
20    go forward, Kim Mettler. And I'll go after that.

21            CHAIRMAN RAMOS: You want me to give you the  
22    speakers slips so you can put them in the order you want  
23    them?

24            UNIDENTIFIED WOMAN: Please.

25            CHAIRMAN RAMOS: I should have started that.

1 That's good.

2 Kim?

3 MS. METTLER: Good afternoon, Chairman and  
4 Commission. When I put my name on that slip, my  
5 lawyer's ego had a whole bunch of really interesting  
6 things to say with regards to this mission that has been  
7 provided to you.

8 My name is Kim Mettler. I need to properly  
9 introduce myself. I'm Kim Mettler. I'm Hidasta Mandan  
10 and a member of three affiliated tribes in Fort  
11 Berthold, North Dakota. So I stand in front of you not  
12 just as the Viejas attorney, but also as a Native  
13 person.

14 As I said my lawyer's ego had a whole bunch of  
15 things to say here, but my ancestors have been reminding  
16 me as I'm listening to the testimony today that for one  
17 thing I'm a visitor to Southern California. I've lived  
18 here for seven years, and this is not my homeland, and I  
19 need to be respectful to the people who do live here,  
20 and the right thing for me to do is to defer to  
21 testimony that we've heard from Carmen and from Greybuck  
22 today, because as a native and as an attorney, there is  
23 absolutely nothing I could say that would add any  
24 substance to what they've already said, and I think, in  
25 fact, it could detract from that. Thank you for your

1 time.

2 CHAIRMAN RAMOS: Thank you.

3 COMMISSIONER MIRANDA: Could I just ask a  
4 question, though, probably of both of you? How did the  
5 decision come about to go ahead and have Viejas become  
6 the MLD?

7 COUNCILMAN GREYBUCK ESPINOZA: It -- that  
8 happened, as I mentioned, when Frank Brown brought this  
9 to our attention, that since KCRC had some type of -- of  
10 agreement or -- or letter signed with Padre Dam, that's  
11 not what we wanted, and it's -- it's part of the policy  
12 they can turn over the MLD status to whomever they  
13 choose, and Viejas chose to do that.

14 CARMEN LUCAS: One thing I'd like to -- to add  
15 here is sometimes when folks come to the KCRC, they go  
16 there with the illusion that -- that the organization is  
17 representing the entire Indian community, and this is  
18 one of the things I've tried to convey to folks.

19 KCRC was formed because of the NAGPRA  
20 Repatriation Act that deals with skeletons in museums  
21 and institutions.

22 What we do as monitors is not really  
23 repatriation. It's inadvertent discovery.  
24 Unfortunately, we've been kind of put in in a way where  
25 when the Heritage Commission notifies the Most Likely

1 Descendant, normally it is KCRC, because they do have a  
2 representative from each of 12, 13 tribes in San Diego  
3 County. So it's -- it's understood without probably  
4 being true that when information comes to KCRC, that it  
5 goes back to the community.

6           Unfortunately, that hasn't always happened just  
7 like Viejas didn't know the ins and outs, nor did  
8 Sycuan, and that's unfortunate, because two years when  
9 this project first started I took it to the KCRC because  
10 I do sit in on their meetings, even though I am not a  
11 voting member, and I sat in on their meetings, and I  
12 told them then, "This project is going forward, please  
13 pay attention, because it has human remains."

14           KCRC's representative, and I hope I'm not  
15 speaking out of turn, because I know I'm not speaking  
16 for them, nor do I speak for them, but it seems as  
17 though their only interest has been just in repatriation  
18 and reburial. So this is something for me as an Indian,  
19 and I've heard other Indians say this, this is a  
20 spiritual violation to take fragmented this bone back 70  
21 miles across the county and bury it. But that's what it  
22 is.

23           These folks, Padre Dam, ASM, anybody else goes  
24 to KCRC with the assumption that's the Indian community,  
25 which I'm not convinced that's really true.

1 I don't know if that helps or not.

2 COMMISSIONER SHERMAN: But if I can just  
3 clarify something, you said Greybuck -- it sounds like  
4 KCRC's own bylaws and policies say that at any time, it  
5 can be turned over to the individual tribe.

6 COUNCILMAN GREYBUCK ESPINOZA: When I was at a  
7 meeting, they made a motion on it and realized -- turned  
8 it over to Viejas.

9 One other thing that I want to add to that is  
10 this, some of us know how important our songs are in  
11 ceremonies, and when KCRC went down to the site, and  
12 they were going to sing some songs to let the spirits,  
13 you know -- having been disturbed, to let them move on,  
14 unfortunately, they weren't able to find any singers.  
15 And that's how the ceremony ended. So -- something the  
16 (inaudible).

17 CHAIRMAN RAMOS: Who does?

18 MS. PROCHASKA: Chairman, briefly --

19 CHAIRMAN RAMOS: Do you want to come back now?  
20 Is that the -- you were number one, weren't you?

21 MS. PROCHASKA: I should have been last. I  
22 apologize, Mr. Chairman.

23 But just very briefly, just to confirm, I serve  
24 as Special Council to Sycuan, my name is Pat Prochaska,  
25 and it is absolutely true in terms of when Sycuan really



1 learned about this is it came to the attention of a  
2 Sycuan Tribal member through Mr. Frank Brown who had  
3 served as a monitor on this site. That is when Sycuan  
4 first became aware of some of what was going on in  
5 February, and immediately upon becoming aware, that's  
6 when Chairman Tucker, Councilmember Sandoval, two  
7 tribal members of Sycuan, and they asked me to accompany  
8 them to the site in late February.

9 So I -- I mean absolutely no disrespect to KCRC  
10 whatsoever, but I was, in fact, told one of the missions  
11 of KCRC is to at least ensure that during the time it  
12 takes to identify which particular band or tribe is the  
13 MLD, that at least the remains and other objects of  
14 significance are with the Native people as promptly as  
15 possible, and that was one of the reasons, as I  
16 understand it, that was explained to me by KCRC.

17 Thank you, Chairman, for hearing this.

18 CHAIRMAN RAMOS: Oh, no problem.

19 We have one more speaker, Courtney. Are you  
20 ready now, Courtney, or do you want to take a recess and  
21 come back? I don't know.

22 MS. COYLE: Well, at the risk of being fired by  
23 my clients for over speaking, I do feel the need to tie  
24 this up a little bit, since I sense we might be heading  
25 toward closure at least for today.

1 I'm Courtney Coyle. I'm an attorney in private  
2 practice representing the Viejas Band as outside  
3 counsel. As has been discussed, the Water District has  
4 thrown a lot of paper at the Commission, at us the day  
5 before the hearing. Nonetheless, I stayed up until 1:30  
6 this morning reviewing it, and I found no new evidence  
7 in there in any way that changes our views on what's  
8 happening.

9 As we move to a hearing with a quorum present,  
10 we ask the Commission to please stay focused on the task  
11 before it which is determining whether the required  
12 findings can be made and not getting lost to a sea of  
13 red herring arguments asserted by the District at times  
14 they may provide for a colorful reading, but on the  
15 whole do not relate to the required findings.

16 We've begun to compile a list of comments to  
17 rebut those assertions, but, you know, we are not going  
18 to go into those today. We will save them and prepare  
19 them for the next hearing.

20 However, we feel it might be most useful for  
21 the Commission to understand where there isn't any  
22 dispute. I'm trying to get to where Chairman and Ms.  
23 Miranda were at, where there is no dispute in the  
24 record, as demonstrated in our submission of April 1.

25 First, there is no dispute the project has

1 greatly impacted the archeological site and would cause  
2 additional impacts.

3 Second, there is no dispute that the District  
4 is a public agency and that the project is on public  
5 land.

6 Third, there is no dispute that the remains of  
7 at least three to eight individuals have been unearthed  
8 and that this is based solely on the data recovery of  
9 only 6 percent of the core cultural area, leaving 94  
10 percent of the core cultural area not being water  
11 screened, not -- not being looked at at all, and some  
12 indication there might have been some interest in  
13 exporting soil somewhere else with human remains in it,  
14 which has been a very big problem in San Diego.

15 That we'll save for another day.

16 So if additional site work had occurred, as you  
17 heard, I think, even from Mr. Hale today, that there is  
18 a very strong likelihood that additional human remains  
19 would have been positively identified, including in that  
20 199 other subset of unidentified human remains that are  
21 out there. There is no dispute that there were grave  
22 goods and ceremonial items associated with those human  
23 remains.

24 There is no dispute that the property contains  
25 broken pottery density greater than any known site in

1 San Diego County, a county with over 19,000 recorded  
2 archeological sites. To me, that is saying a lot.  
3 There is no other site like this that we know of as  
4 dense with pottery that's not a large village site.  
5 That comes from -- I can see John's face -- that comes  
6 from their data recovery report.

7           There is no dispute that the District did not  
8 make findings regarding public interest and necessity  
9 when it approved the project. It is not there, or I am  
10 sure they would have provided it to you in that volume  
11 of documents.

12           Just because the District does not like the way  
13 the law is written, the manner in which the Commission  
14 operates, that the MLD was transferred, or that there  
15 may have been some immaterial paperwork errors by Staff,  
16 does not negate the fact that the statutory basis for  
17 Viejas' request, sufficient evidence is in the record,  
18 and the necessary findings can still be made.

19           In its submission, the District writes that it  
20 desires to find a resolution amenable to all parties in  
21 this matter. You kind of have to look for it, but it is  
22 sort of buried in there. That gives me a glimmer of  
23 hope that maybe with the Commission's positive findings  
24 in this matter, that maybe that will offer the best step  
25 forward to try to achieve the District's stated goals,

1 preserving the statutory options of the parties, and  
2 creating room for successful negotiated agreement.

3 I'll close these comments simply by stating  
4 that Viejas felt it was negotiating in good faith with  
5 the District.

6 Up until Friday, I forget what time you sent  
7 your email, asking Mr. Gilpin whether there was any new  
8 information that he needed to share with us on his end,  
9 and he kind of glibly said, "No, but here is our  
10 submission to the Commission," which then went on, I  
11 think, to mischaracterize where we thought we were in  
12 trying to negotiate a solution.

13 Based on this apparent lack of trust, we, as  
14 Councilman Espinoza said, we would support the  
15 Commission recommend to Padre today that no construction  
16 activity occur until after the hearing where we have a  
17 quorum.

18 So with that I'll conclude. Thank you for your  
19 attention today.

20 COMMISSIONER SHERMAN: Thank you.

21 CHAIRMAN RAMOS: Thank you.

22 COMMISSIONER MIRANDA: Can't we make any  
23 motions at all?

24 CHAIRMAN RAMOS: Thank you for the written  
25 mitigation. This is Exhibit S? Somebody says

1 Exhibit S?

2 COMMISSIONER SHERMAN: No. That wasn't the  
3 mitigation. That was just the --

4 CHAIRMAN RAMOS: Do we have a copy in the  
5 packet?

6 COMMISSIONER MIRANDA: The mitigation measures  
7 that KCRC supposedly agreed to for the data recovery.

8 CHAIRMAN RAMOS: Is that Exhibit S?

9 UNIDENTIFIED WOMAN: Yes.

10 COMMISSIONER MIRANDA: It is not, no. It is  
11 not Exhibit S. We need that.

12 MR. GILPIN: I am happy to submit it.

13 CHAIRMAN RAMOS: I was reading all this. A lot  
14 of it looks familiar.

15 MR. GILPIN: I think, let me clarify,  
16 Commissioner Miranda. You are asking for the  
17 documentation regarding what KCRC agreed to in February?

18 COMMISSIONER SHERMAN: Right.

19 MR. GILPIN: As part of the --

20 COMMISSIONER MIRANDA: You kept saying you had  
21 an agreement with them about moving forward and what to  
22 do with the remains.

23 CHAIRMAN RAMOS: I thought it was Exhibit S.

24 MR. GILPIN: I think it is the documentation  
25 regarding the agreement to allow the data recovery to



1 occur between February and October.

2 CHAIRMAN RAMOS: But you didn't have mitigation  
3 process as far as the burial, inadvertent discovery of  
4 remains? Did you have that?

5 MR. GILPIN: That was part of the MND.

6 CHAIRMAN RAMOS: That's in this document  
7 somewhere?

8 JOHN COOK: Yes.

9 CHAIRMAN RAMOS: Where at?

10 JOHN COOK: It's in the end, the recommendation  
11 part of the evaluation, which should be an appendix to  
12 the MND.

13 COMMISSIONER MIRANDA: I'll show you.

14 MS. COYLE: And it reflects a standard process,  
15 nothing specifically applies to this situation.

16 CHAIRMAN RAMOS: Okay. Since Viejas is now  
17 taking the lead in this, because it's been ongoing  
18 discussions regarding mitigation now? Where are we at  
19 with this?

20 MR. GILPIN: Well, there have been, and I don't  
21 like the dispersion by Ms. Coyle regarding the  
22 negotiation because, in fact, we met with Greybuck and  
23 associates Viejas only to learn the next morning they  
24 requested this hearing, and they never made mention of  
25 that at the meeting. We're going to and want to have

1 ongoing negotiations.

2 Also, as the Commission, there is a provision  
3 that allows a party to ask you to mediate this dispute,  
4 and we've done that.

5 Those requests have been rebuffed because the  
6 Commission does not want to become involved unless  
7 Viejas agrees.

8 CHAIRMAN RAMOS: No, I've seen -- I've seen  
9 that. I've seen -- I've seen your request, but also  
10 there were time frames on it that we couldn't -- that  
11 were pretty quick, and I have seen at the end of that if  
12 we didn't respond by a certain date in March you were  
13 going to go ahead and move forward with the reburial on  
14 your own with a respectful, dignified manner. So, I  
15 mean, we're all here to work together to move forward,  
16 but if that's not going to be the case, then everybody  
17 has to look at what options we have. I think we're not  
18 at that point.

19 I think there is still time to really work  
20 together to try to bring some closure to this, and so  
21 I -- I read your letter. I've seen the letter.

22 MR. GILPIN: I agree.

23 CHAIRMAN RAMOS: But there were some quick time  
24 frames on that. Do you agree on that?

25 MR. GILPIN: I agree with the request to

1 mediate --

2 CHAIRMAN RAMOS: We need -- at the next meeting  
3 we're going to come together. I think we're still at  
4 that point we can all work together, find some common  
5 ground to move forward. But if we're going to start,  
6 you know, moving down separate roads, then everybody is  
7 going to look at the options that we're at. So I think  
8 we're not at that point yet.

9 Do you agree?

10 MR. GILPIN: Agreed. My only request is that  
11 before the three-week hearing, I would request that the  
12 Commission have someone come assist in the discussions  
13 between Viejas and the agency. I think your role as the  
14 mediator, I think it provides a bridge between the  
15 communities. I think that makes sense. We're not at  
16 impasse. I think there has been, you know --

17 COMMISSIONER MIRANDA: But --

18 MR. GILPIN: -- lawyer ego, posturing by both  
19 sides as to what we are going to do with regard to  
20 lawyer ego, but the parties themselves have expressed a  
21 willingness to discuss a resolution, and we're certainly  
22 committed to that.

23 COMMISSIONER MIRANDA: But --

24 MS. METTLER: If I -- I just want to interject  
25 here. Viejas from the beginning has made every effort

1 to work with Padre Dam. Padre Dam demanded the  
2 mediation of this Commission. It ignored three requests  
3 by Viejas to meet to discuss how we are going to move  
4 forward on this issue. Instead it just went ahead and  
5 demanded mediation with the Commission and gave what?  
6 Two days to -- to step up and mediate this issue.

7           You're going to read in the documents that they  
8 provided to you numerous mischaracterizations of the  
9 actions of both parties. They want you to believe that  
10 we've been obstinate, that we have been digging our  
11 heels in on this issue when, in fact, it has been Padre  
12 Dam that has failed to timely reply and provide the  
13 information that we've requested. There has not been  
14 numerous meetings of the parties. There have been  
15 three. Two of those were requested by Viejas. One of  
16 them was last Friday, and what Mr. Gilpin hasn't told  
17 you is that Padre Dam asked Viejas to consider whether  
18 we would be happy with the redesign of the project  
19 on-site, or would we consider moving the project  
20 off-site? Would that make us happy?

21           So for him to come and characterize that, you  
22 know, poor Padre Dam, they're the victim here is -- is  
23 posturing at its finest, and to now make the request of  
24 the Commission to act as an informal mediator I think is  
25 just disingenuous on their part, because they have not

1 genuinely and meaningfully engaged in conversations with  
2 Viejas about how to resolve this issue.

3 CHAIRMAN RAMOS: Okay.

4 COMMISSIONER MIRANDA: Well, is that something  
5 that given this is now in front of us, and it's eminent  
6 that we're going to move forward with some kind of  
7 decision in the next few weeks, does that change the  
8 makeup of -- of the situation at all, or should we --  
9 because we want to be a resource for you all. We want  
10 to do whatever you all want -- you know, want to do.

11 If you need us to be there as a mediator, we'll  
12 do that. If -- if that's not where we are, and we just  
13 need to set the hearing, then we'll set the hearing.

14 MS. METTLER: We'd like to see that a hearing  
15 is set, and in the meantime, as we have done from the  
16 beginning, we will continue with our negotiations with  
17 Padre Dam.

18 CHAIRMAN RAMOS: One thing that would be ideal  
19 is we're going to move forward in setting the date down  
20 in Southern California. But if we could let Staff do  
21 the process with Viejas, and --

22 COMMISSIONER MIRANDA: If you all need them.

23 CHAIRMAN RAMOS: And with Padre Dam. If  
24 everybody is agreed to that, then we can work out some  
25 things so when we come to this hearing we have some

1 options in front of us. If at that time we don't have  
2 options in front of us, some type of workability, then  
3 we have to look at -- at what really are our options to  
4 move forward at that time.

5 Is that something that is acceptable or --

6 COMMISSIONER MIRANDA: I think they want to  
7 move forward now.

8 COUNCILMAN GREYBUCK ESPINOZA: I think we're  
9 going to have to take that decision back to the Tribal  
10 Council and let them make that decision, and we can take  
11 that recommendation and -- and get approval or  
12 disapproval, and report back to the Commission and Padre  
13 Dam.

14 COMMISSIONER MIRANDA: Can we just leave it  
15 that we're here if you need our Staff, and we'll just  
16 leave it at that?

17 UNIDENTIFIED MAN: Terrific.

18 COMMISSIONER MIRANDA: And -- but we'll go  
19 ahead and set the hearing date.

20 COUNCILMAN GREYBUCK ESPINOZA: Yes, definitely.  
21 I think we're civil enough to sit down and -- and  
22 discuss that amongst ourselves. We don't need anybody  
23 to referee.

24 CHAIRMAN RAMOS: We're still going to set the  
25 hearing date. So hopefully -- all right?



1 COMMISSIONER MIRANDA: And just for  
2 clarification, I'm looking at Cultural Resources Section  
3 3.5, starting on page 42, in a document dated 3/15/2010.  
4 Is that the right place to be looking for mitigation  
5 measures?

6 MS. COYLE: Yes, but that's the wrong date. I  
7 think that's the date that they printed it out. I think  
8 the date on that is sometime in 2008.

9 UNIDENTIFIED MAN: November.

10 COMMISSIONER MIRANDA: Oh, okay, the document  
11 is dated different than when it was printed.

12 MS. COYLE: It is the section that has the  
13 cultural resource analysis, such as it is --

14 COMMISSIONER MIRANDA: August 2008 is when this  
15 document is dated.

16 MS. COYLE: That sounds about right, yes.

17 CHAIRMAN RAMOS: 2008?

18 COMMISSIONER MIRANDA: So for you guys it's  
19 Exhibit N.

20 CHAIRMAN RAMOS: Oh, it's Exhibit N in the big  
21 packet.

22 COMMISSIONER MIRANDA: N in the big packet.  
23 Specifically page 42.

24 CHAIRMAN RAMOS: If you do -- well, let us know  
25 if -- if you need our assistance in that. We will set

1 the hearing down in -- in Southern California for this  
2 in the next couple of weeks, three or four weeks looking  
3 out so we can post the agenda items and stuff. Okay?

4 COMMISSIONER MIRANDA: In the meantime I know  
5 that -- I know that we're not allowed to make any  
6 motions, but as a Commissioner I'm just going to request  
7 that we kind of keep everything status quo and -- I  
8 don't know -- I'm just making this request, that no  
9 further disturbances to the site occur until we can  
10 regroup and get back together, and I know I can't -- I  
11 can't make a formal motion about that, but that's as a  
12 Commissioner, I'm just requesting the -- that the  
13 parties should do that.

14 MR. GILPIN: I appreciate the request. I, like  
15 Greybuck -- I can't agree with that on behalf of the  
16 client, but I will certainly forward that for  
17 consideration.

18 CHAIRMAN RAMOS: But if your client decides  
19 they don't want to, would you let me know right away?

20 MR. GILPIN: And that's also -- yes. We will  
21 advise both parties, Viejas and the Native American  
22 Heritage Commission if we decide to proceed with the  
23 construction.

24 MS. COYLE: Chairman, a follow-up question?

25 CHAIRMAN RAMOS: Yes. To who?

1 MS. COYLE: To Mr. Gilpin. Through the Chair  
2 to Mr. Gilpin.

3 Would you be recommending to your client to  
4 follow the recommendation of Ms. Miranda? I know your  
5 client will decide, but you have some people here.

6 MR. GILPIN: I don't know. I never disclose my  
7 attorney-client rights --

8 MS. COYLE: Well, did you in the last  
9 submission --

10 MR. GILPIN: I think it -- I think it makes  
11 some sense, Ms. Coyle, but the District has been  
12 marching in place (inaudible) -- it is going to be their  
13 decision. I will certainly advise them of Commissionre  
14 Miranda's request, and I think the situation (inaudible)  
15 next three weeks warranted -- warrants them holding in  
16 place, but, you know, if this thing continues to drag  
17 on, they have other issues relative to, you know, where  
18 the project is, the contractor's orders regarding  
19 materials, et cetera. But I certainly will -- will  
20 forward the request.

21 COMMISSIONER MIRANDA: Well, I just want to  
22 remind you that you still have your consultation  
23 obligations to fulfill, and I'm sure you're going to be  
24 keeping in contact with Viejas and interested parties  
25 regardless.

1           MR. GILPIN: Sure. Absolutely. I don't -- I  
2 don't mean to appear obstinate at all.

3           COMMISSIONER MIRANDA: Okay.

4           MR. GILPIN: It is being a lawyer.

5           CHAIRMAN RAMOS: All right. Is that it? Is  
6 there any other public comment? Hearing none --

7           (Whereupon the meeting ended.)

8                           \* \* \*

1 COUNTY OF SAN DIEGO, )

2 STATE OF CALIFORNIA, )

3  
4 I, Rosalie A. Kramm, Certified Shorthand Reporter  
5 licensed in the State of California, License No. 5469,  
6 hereby certify that the foregoing was reported by me and  
7 was thereafter transcribed with Computer-Aided  
8 Transcription; that the foregoing is a full, complete,  
9 and true record of said proceeding.

10 I further certify that I am not of counsel or  
11 attorney for either or any of the parties in the  
12 foregoing proceeding and caption named or in any way  
13 interested in the outcome of the cause in said caption.

14 The dismantling, unsealing, or unbinding of the  
15 original transcript will render the reporter's  
16 certificates null and void.

17 In witness whereof, I have hereunto set my hand  
18 this day: April 27, 2010.

19  
20  
21 \_\_\_\_\_  
22 ROSALIE A. KRAMM, CSR NO. 5469, CRR  
23  
24  
25